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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 490

THE UNITED STATES OF AMERICA,
Appellant,

vs.

COTTON VALLEY OPERATORS COMMITTEE,
ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

MOTION OF MAGNOLIA PETROLEUM COMPANY TO DISMISS

DIXON CARROLL,
WALACE HAWKINS,
EARL A. BROWN,
CHAS. B. WALLACE,
Counsel for Appellee,
Magnolia Petroleum
Company.

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

Civil Action No. 2209

UNITED STATES OF AMERICA,
Plaintiff,

v.

COTTON VALLEY OPERATORS COMMITTEE,
ET AL.,
Defendants

MOTION OF APPELLEE MAGNOLIA PETROLEUM COMPANY TO DISMISS

Filed Nov. 23, 1949. Philip H. Mecom, Clerk, U. S. Dist. Court, West. Dist. of Louisiana.

To: The Clerk of the United States District Court for the Western District of Louisiana, Shreveport Division; or, in the alternative, to the Clerk of the Supreme Court of the United States, Washington, D. C.—whichever clerk has possession of the record under Rule 12, sec. 3, Rules of the Supreme Court of the United States

Now comes appellee Magnolia Petroleum Company in the above-numbered and -entitled cause and for motion to

dismiss under Rule 12, sec. 3, Rules of the Supreme Court of the United States, respectfully shows to the Court the following:

I

Appellee Magnolia Petroleum Company was served on or about November 16, 1949 with the papers preliminary to the perfection of appeal as prescribed by Rule 12, sec. 2, Rules of the Supreme Court of the United States, and this motion to dismiss is made within fifteen (15) days after such service, as provided for by Rule 12, sec. 3, Rules of the Supreme Court of the United States.

II

For its first ground on which this motion to dismiss is based appellee Magnolia Petroleum Company respectfully shows to the Court that the judgment of the trial court dismissing this suit is not a "final judgment" within the terms and provisions of the act of June 9, 1944, c. 239, 58 Stat. 272; June 25, 1948, c. 646, § 17 62 Stat. 989, eff. Sept. 1, 1948; 15 U. S. C. A. § 29.

And in such connection appellee Magnolia Petroleum Company further shows that the dismissal below was the result of the failure of plaintiff, United States of America, to first produce for the Court's inspection certain documents or copies of the written instruments and that such dismissal was solely occasioned because of the refusal of plaintiff, United States of America, to first produce such instruments for the Court's inspection, and in such connection appellee Magnolia Petroleum Company shows further that the decree below does not terminate the litigation between the parties on the merits of the case.

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III

For its second ground on which this motion to dismiss is based appellee Magnolia Petroleum Company further shows to the Court that the judgment of the trial court dismissing this suit is not a "final judgment" within the terms and provisions of the act of June 9, 1944, c. 239, 58 Stat. 272; June 25, 1948, c. 646, § 17, 62 Stat. 989, eff. Sept. 1, 1948; 15 U. S. C. A. § 29.

And in such connection appellee Magnolia Petroleum Company further shows that the dismissal below did not dispose of the prayer of this appellee for the affirmative relief, as contained in its Thirty-second Defense and in its prayer, which defense and prayer are as follows:

> *"Thirty-second Defense*
>
> "Now comes defendant Magnolia Petroleum Company and affirmatively prays judgment of the Court declaring that the contract of the CVOC, as approved by the Corporation Commission of the State of Louisiana, be declared in all things legal and valid and not violative of federal antitrust laws, and this defendant further prays that the Court enter judgment declaring that the operations of the CVOC as formerly, presently, and as contemplated in the future be deemed to constitute no violation of the federal antitrust laws.
>
> " * * *
>
> "WHEREFORE, premises considered, this defendant prays judgment of the Court that plaintiff take nothing and that it go hence with its costs without day; this defendant prays judgment for declaratory relief as to the CVOC contract and the operations of CVOC."

IV

Appellee Magnolia Petroleum Company has attached hereto, in support of this motion to dismiss, a memorandum trial brief.

WHEREFORE, premises considered, appellee Magnolia Petroleum Company prays the Court to dismiss this cause for lack of jurisdiction herein.

DIXON CARROLL,
Ricou-Brewster Building,
Shreveport, Louisiana.
WALACE HAWKINS,
EARL A. BROWN,
CHAS. B. WALLACE,
2311 Magnolia Building,
P. O. Box 900,
Dallas, Texas.
Tel. C-4131, Sta. 248,
L.D. 246.
Attorneys for Appellee,
Magnolia Petroleum
Company.

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MEMORANDUM BRIEF IN SUPPORT OF MOTION OF APPELLEE MAGNOLIA PETROLEUM COMPANY TO DISMISS.

In support of its first ground to dismiss: the dismissal below was not a termination of the litigation between the parties on the actual merits of the case.

This dismissal of the court below was the result of the failure of the Government to comply with a preliminary interlocutory order of the Court requiring production of documents before the Court itself. There was no determination between the parties on the actual merits of the case at such stage of the proceedings, and any disposition which such order of dismissal had would only act indirectly upon the parties or the merits of the case.

Parsons v. *Robinson*, 122 U. S. 112;
Catlin v. *U. S.*, 324 U. S. 229;
Heike v. *U. S.*, 217 U. S. 423.

In support of its second ground to dismiss: the dismissal below did not dispose of the prayer of appellee Magnolia Petroleum Company for affirmative declaratory relief.

The affirmative prayer of appellee Magnolia Petroleum Company for declaratory relief involved the validity of the CVOC contract and the operations under this contract, both in the past, in the present, and as contemplated. This involved the same elements complained of by the United States and was not an entirely distinct claim, nor was it a matter distinct from the general subject of litigation, nor did it affect only parties to a particular controversy. In order for the judgment below to be final, such decree of dismissal must be not only final but must be complete, that

is, final not only as to all parties but as to the whole subject-matter and as to all the causes of action involved.

Collins v. *Miller*, 252 U. S. 364, 370;
Arnold v. *U. S.*, 263 U. S. 427, 434;
Nyanza Steamship Company v. *Jahncke Dry Dock*, 264 U. S. 439, 440;
Reeves v. *Beardall*, 316 U. S. 283, 285.